No. 26-__

IN THE

Supreme Court of the United States

KYLE WAGNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Bail Reform Act of 1984 authorizes the detention of a person charged with a criminal offense pending trial if a "judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person" for trial "and the safety of any other person and the community." 18 U.S.C. § 3142(e)(1), (f).

If the detainee or the government disagrees with the district court's judgment on that issue, they may "appeal from a release or detention order," and ask the court of appeals to review that decision. *Id.* § 3145(c). But "[t]he circuits have long been split on just how searching that review is." *United States* v. *Wilks*, 15 F.4th 842, 847 (7th Cir. 2021). "Some courts" apply de novo review, others apply "the clearly erroneous or other highly deferential standard," and still others occupy a middle ground, conducting "independent review" tempered by "deference" to the district court. *United States* v. *O'Brien*, 895 F.2d 810, 812-814 (1st Cir. 1990).

The question presented is:

Whether an appellate court should review a district court's order granting or denying pretrial release de novo—as the Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have held—or whether the appellate court owes some deference to the district court's determination, as the First, Second, Third, Fourth, Fifth, Seventh and D.C. Circuits have held?

PARTIES TO THE PROCEEDING

Petitioner in this Court is Kyle Wagner, who was Defendant-Appellee below. Respondent in this Court is the United States of America, which was Plaintiff-Appellant below.

RELATED PROCEEDINGS

United States v. *Wagner*, No. 2:26-cr-20059-DPH-APP (E.D. Mich.)

United States v. *Wagner*, No. 0:26-cr-00115-KMM-DTS-7 (D. Minn.)

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES:

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OPINIONS BELOW

The district court's order is unreported, and appears in the Petition Appendix (App.) at 65a-79a. The Sixth Circuit's decision will be, but has not yet been, reported. It is available at 2026 WL 2333589 and is reproduced at App. 1a-64a.

JURISDICTION

The Sixth Circuit issued its decision on August 12, 2026. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves sections 3142 and 3145 of Title 18, which are reproduced in the appendix at App. 196a-210a.

INTRODUCTION

Under the Bail Reform Act of 1984, a federal district court may detain a criminal defendant pending trial only where the government demonstrates, by clear and convincing evidence, that no conditions of release will reasonably assure the defendant's appearance at trial and the safety of the community. 18 U.S.C. § 3142(e), (f). The Act permits expedited "appeal from a release or detention order." *Id.* § 3145(c). However, the Act does not explicitly prescribe a standard for reviewing the district court's determination, and the circuits were already "sharply split on this question" within a year of the Act's passage. *United States* v. *Hurtado*, 779 F.2d 1467, 1470-71 (11th Cir. 1985).

The division has only deepened in the four decades since. Today, every federal court of appeals with criminal jurisdiction has weighed in on the appropriate standard of review—and they remain deeply divided. *See, e.g.*, Jefri Wood, *The Bail Reform Act of 1984* § VII, at 57-58 (Fed. Jud. Ctr. 4th ed. 2022) (cataloging the split); *United States* v. *Wilks*, 15 F.4th 842, 847 (7th Cir. 2021) ("The circuits have long been split on just how searching that review is * * * ."); App. 39a (Bloomekatz, J., dissenting) ("[O]ur sister circuits have split on the issue."). "Some courts" apply de novo review; others apply "the clearly erroneous or other highly deferential standard;" and still others occupy a middle ground, conducting "independent review" tempered by "deference" to the district court. *United*

States v. *O'Brien*, 895 F.2d 810, 812-814 (1st Cir. 1990); *United States* v. *Bayko*, 774 F.2d 516, 520 (1st Cir. 1985).

This case presents an ideal—and rare—vehicle to resolve the long-standing split and bring national uniformity to an important phase of pretrial criminal procedure. The issue has consistently evaded this Court's review because of the temporary nature of pretrial detention orders. Those orders naturally expire when trial ends, so the matter of pretrial detention typically becomes moot before this Court can act. However, this petition comes to this Court on an expedited basis. There are currently at least seven weeks before the trial in this case is set to begin.

The United States indicted petitioner Kyle Wagner based on a social media post and sought his pretrial detention by pointing to other online statements critical of government officials. The government claimed that Wagner's speech indicated dangerousness. Reviewing the totality of the evidence before it, a district court determined that Wagner could be released pretrial subject to certain conditions, including limits on his movements and internet use. Yet, at the government's request, a divided Sixth Circuit panel reweighed the evidence de novo and ordered that Wagner be detained pending trial.

As Judge Bloomekatz explained in dissent, the majority's approach placed the Sixth Circuit on the wrong side of the widely-acknowledged circuit split. App. 39a-43a (Bloomekatz, J., dissenting). In seven other circuits, the district court's release determination would have been afforded some degree of deference. And the "outcome" of the appeal "depend[ed] upon" the standard of review, *Dickinson* v. *Zurko*, 527

U.S. 150, 162 (1999). As the dissent observed, under a deferential standard there was no "convincing reason to overturn the district court's conclusion that the stringent conditions of Wagner's release * * * are sufficient to protect the public and assure his appearance." App. 28a-29a (Bloomekatz, J., dissenting).

The Sixth Circuit's de novo weighing of the evidence is irreconcilable with this Court's precedents, which hold that appellate courts must defer to trial courts when reviewing fact-bound and case-specific questions, as well as those the district court is better positioned to resolve. A district court conducting a detention hearing meets the defendant, hears from witnesses, and draws on its day-to-day experience with pretrial supervision in the district where the defendant will be released. The panel of judges on the court of appeals, by contrast, reviews a cold record and may sit hundreds of miles from the community whose safety is at issue.

How courts evaluate whether a defendant awaiting trial will be detained or released should not turn on the happenstance of geography. To ensure that this rare opportunity to resolve the split is not lost, the Court should expedite review and grant this petition.

STATEMENT

A. Statutory Background

Congress passed the Bail Reform Act of 1984 to provide consistent standards for federal pretrial release and detention practices. The Act was not intended to substantially increase pretrial detention but rather to grant judges the discretion to "deny release pending trial" of "a small but identifiable group of particularly dangerous defendants." S. Rep. No. 98-225, at 6-7

(1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3189. Congress presumed that release would "continue to be appropriate for the majority of Federal defendants." *Id.* at 12.

To this end, section 3142 sets forth a general presumption that defendants "shall" be released before trial upon either upon "personal recognizance" or upon such condition or combination of conditions that "the judicial officer determines" are necessary to "reasonably assure the appearance of the person as required" and "the safety of any other person or the community." 18 U.S.C. § 3142(a), (c).

If the government nevertheless seeks detention, the judicial officer is required to hold a detention "hearing." *Id.* § 3142(f). The hearing must be held promptly "upon the person's first appearance before the judicial officer," and entitles the person to be represented by counsel; to testify and to present and cross-examine witnesses; and to "present information by proffer or otherwise." *Id.* A defendant may be detained only if the government overcomes the presumption of release by establishing that no set of release conditions will "reasonably assure" the defendant's appearance when required and the safety of the community. *Id.*

In "determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community," the judicial officer is directed to "take into account" information concerning several factors. *Id.* § 3142(g). These include "(1) the nature and circumstances of the offense charged"; "(2) the weight of the evidence against the person"; "(3) the history and characteristics of the person, including" the "person's character, physical and mental condition," family and community ties, and past conduct; and "(4) the nature and seriousness of the danger to any person or the community." *Id.*

The "procedures by which a judicial officer evaluates the likelihood of future dangerousness are specifically designed to further the accuracy of that determination." *United States* v. *Salerno*, 481 U.S. 739, 751-752 (1987). If the judicial officer finds that no conditions of pretrial release can reasonably assure the safety of other persons and the community, he must state his findings of fact in writing, 18 U.S.C. § 3142(i), and support his conclusion with "clear and convincing evidence," *id.* § 3142(f).

Both the detainee and the government are entitled to "appeal from a release or detention order." *Id.* § 3145(c). That appeal is "governed by" the same statutes that grant courts of appeals jurisdiction over final decisions of district courts. *Id.* (citing 18 U.S.C. §§ 1291, 3731). And the statute instructs that "[t]he appeal shall be determined promptly." *Id.*

B. Factual Background

Petitioner Kyle Wagner is a Minneapolis resident with no violent criminal history. App. 20a, 55a. He became a vocal online critic of Immigration and Customs Enforcement (ICE) during "Operation Metro Surge," a Department of Homeland Security (DHS) immigration-enforcement operation that deployed thousands of federal agents to the Minneapolis-St. Paul area in December 2025. App. 27a. Wagner regularly posted on social media, sometimes multiple times a day, to criticize ICE and to call for his followers to protest and oppose ICE. *Id.*

Sometime in early January 2026, DHS began reviewing Wagner's social media posts. App. 30a, 163a-

164a. The posts calling for his followers to protest and oppose ICE were generally tempered by references to nonviolence or self-defense. App. 3a-4a, 30a-32a. For example, on January 10, Wagner posted a video stating that protesters should "[g]et out on the streets. Have some f------ fun. Keep your heads. We're not the violent ones. Go take their f------ masks off and take their f------ guns." App. 31a, 169a-170a

Wagner regularly "disavowed any intent to commit physical aggression" and Wagner noted in his posts that he does not own any weapons. App. 4a, 28a. For example, on January 12, Wagner stated, "I am unarmed - my only weapon is my fists and my voice." App. 31a, 173a. He explained in another post, "I disarmed myself in 2022 during the aftermath of George Floyd * * * I chose to surrender the few hunting rifles I had to my dad - and have since been unarmed." App. 31a.

Wagner became distraught at the end of January 2026, following ICE officers' fatal shooting of Minneapolis resident Alex Pretti. Wagner had known Pretti personally for many years. App. 32a, 181a-186a. Some of Wagner's posts during this time referenced firearms. For example, in an Instagram video, Wagner extolled "the Second Amendment [as] the only thing" that could "protect[]" people, and stated "[g]et your f------ guns and stop these f------ people." App. 32a-33a, 181a-186a. Despite these statements, Wagner did not possess or seek to obtain any firearms. App. 150a.

Around that time, Wagner was interacting online with J.S., a "pro-ICE" social media influencer. App. 164a. J.S. was not a member of ICE nor even a government employee. J.S. was an online personality who vocally supported ICE, in contrast with Wagner's vocal critique of that organization.

After J.S. posted a video of himself knocking on the door of a left-leaning Minnesota journalist, Wagner noted that J.S. himself had previously been "doxxed"—that is, someone else had previously published J.S.'s name, phone number, and address online. Wagner reposted that information to his own social media account and pointed out that "we can all knock on strangers doors." App. 186a-187a. J.S. responded not in fear, but by sending Wagner a direct message challenging him to a "cage fight", a challenge which Wagner publicly accepted. App. 6a, 92a, 187a.

C. Procedural History

1. Based on the social media post in which Wagner reposted what be believed to be J.S.'s name, phone number, and address, the government indicted Wagner in the Eastern District of Michigan on one count of cyberstalking under 18 U.S.C. § 2261A(2), and one count of interstate communications involving threats, *id.* § 875(c). App. 186a-188a; App. 189a-195a.

Although the crimes charged focused on the J.S. post, the government's discussion of Wagner's indictment focused on Wagner's criticisms of ICE. The criminal complaint contained twenty-seven pages reproducing Wagner's other social media postings that criticized ICE. App. 160a-188a. The White House Press Secretary highlighted some of those postings during a daily press briefing. *See* Steve Karnowski, *Minneapolis Man Accused of Cyberstalking, Threatening ICE Supporter Amid Crackdown in Minnesota*, Associated Press (Feb. 10, 2026, at 16:33 ET), https://perma.cc/3H3P-HUW8. And the Department of Justice issued a press release that quoted then-

Attorney General Pam Bondi as stating "if you come for law enforcement, the Trump Administration will come for you." *See* Press Release, Office of Public Affairs, U.S. Dep't of Justice, *Anti-ICE Antifa member arrested on federal charges of Cyberstalking and Threatening Communications after allegedly calling for the murder and assault of federal immigration officers in Minneapolis* (Feb. 5, 2026), *available at* https://perma.cc/Y65K-T34U.

2. Wagner was arrested in Minnesota, where he lives. But the criminal complaint and indictment were filed in the Eastern District of Michigan. According to the indictment, the alleged victim, J.S., was in the Eastern District of Michigan at the time Wagner posted J.S.'s information on social media. App. 190a.

A magistrate judge in the District of Minnesota conducted an initial hearing and ordered Wagner detained, later explaining that this decision was based in part on a "concern that Mr. Wagner may not have the ability * * * to get to Michigan to make the court appearance." App. 36a (Bloomekatz, J., dissenting) (quoting arraignment transcript).

Wagner's case was then transferred to the Eastern District of Michigan, and he appealed the magistrate judge's detention order to the district court. App. 6a-7a. The district court held a two-day detention hearing. App. 80a-159a. During that hearing, the government offered evidence of Wager's public and private social media activity and presented arguments for why he should be detained. App. 100a-113a, 128a-135a. Wagner's counsel noted his lack of violent criminal history, and explained that the social media posts similarly stressed non-violence. Pretrial Services recommended release. App. 37a, 122a.

At the conclusion of the hearing, the district court issued an oral ruling in which it made findings of fact and ordered that be Wagner be released subject to a set of both standard and special release conditions. App. 139a-152a; *see also* App. 65a-79a. Those conditions required, among other things, that Wagner submit to GPS monitoring; "refrain from posting on social media"; forgo accessing the internet with anything other than two approved devices (one phone and one computer); and "[n]ot engage in assaultive, threatening, or harassing behavior or statement[s]." App. 72a, 74a-76a. The district court concluded that, given Wagner's lack of violent criminal history and the other information before it, these conditions were sufficient to assure the safety of others and Wagner's appearance at trial. App. 143a-145a.

3. The government appealed the district court's release order and moved for an emergency stay, which the Sixth Circuit granted. App. 7a. Then, a divided panel reversed the district court's release order. App. 2a.

Judge Hermandorfer, writing for the panel majority, first held that the court would review the district court's ultimate detention decision de novo, and rejected Wagner's arguments in favor of "abuse of discretion review." App. 9a-10a. The majority concluded that its preferred "framework—de novo review for the ultimate application of the statutory factors to the detention determination, and clear-error review for findings of fact—tracks the circuits' prevailing approach to reviewing detention decisions under the Bail Reform Act." App. 9a.

Turning to the merits, the majority analyzed each of the four factors set forth in section 3142(g) based on a de novo review of the evidence in the record. App. 11a-20a. Specifically, the majority interpreted Wagner's various social media posts as "calls for violence," discounting his explanations about those statements' context—and concluded that the "'weight of the evidence' * * * points toward Wagner's dangerousness." App. 14a, 16a-17a. And the majority further concluded that "the various conditions [the district court] imposed" would not "mitigate Wagner's dangerousness" because, in the panel's view, Wagner could evade those conditions. App. 21a-22a.

Judge Bloomekatz dissented, disagreeing with both the majority's use of the de novo standard and its weighing of the evidence. Her dissent highlighted the split among the courts of appeals regarding the standard of review—and explained that, under this Court's precedents, deference is appropriate because "the district court is better positioned than our court to resolve the question of whether any condition or combination of conditions will reasonably assure the defendant's appearance and the safety of the community." App. 40a.

Conducting her own analysis of Wagner's social media postings, she further explained that she would have upheld the district court's release order because—while Wagner's social media postings were "no doubt fiery and aggressive" and "also clearly full of bravado and rhetoric"—the government in her view had "not provided a convincing reason to overturn the district court's conclusion that the stringent conditions of Wagner's release * * * are sufficient to protect the public and assure his appearance" at trial. 28a-29a.

This petition follows.[1]

REASONS FOR GRANTING THE PETITION

This case presents an ideal vehicle for resolving an entrenched circuit split on the appropriate standard for reviewing district courts' pretrial detention orders under the Bail Reform Act. The issue is one of tremendous legal and practical importance. But the split has evaded review because there is typically not enough time to litigate the issue through this Court before a criminal case proceeds through trial. Expedited consideration of this petition would enable this Court to provide clarity on an important matter of criminal procedure.

I. CERTIORARI IS WARRANTED TO RESOLVE AN ENTRENCHED, ACKNOWLEDGED CIRCUIT SPLIT.

The circuit courts are divided over the standard of review for pretrial detention and release orders under the Bail Reform Act of 1984. The split emerged almost immediately after the Act's passage, and it has become entrenched in the decades since. Today, the circuits are divided into three camps. Five circuits

[1] The Government has separately obtained a grand jury indictment against Wagner in the District of Minnesota for unrelated conduct. *See* Indictment, *United States* v. *Wagner*, No. 0:26-cr-00115-KMM-DTS-7, ECF No. 1 (D. Minn. June 11, 2026). That indictment charges Wagner and several others with conspiracy to impede or injure a federal officer, solicitation to commit a crime of violence, and transmitting interstate threats. *See id.* Wagner has entered a plea of not guilty. *See* Arraignment Minutes, *United States* v. *Wagner*, No. 0:26-cr-00115-KMM-DTS-7, ECF No. 197 (D. Minn. July 27, 2026). As Judge Bloomekatz observed, none of Wagner's co-defendants in that case were detained pending trial. App. 37a-38a n.1.

review the district court's ultimate detention determination de novo. Four circuits review that determination only for clear error. And three circuits take an intermediate approach, conducting an independent review tempered by deference to the district court's firsthand experience with the case.

A. Five Circuits Apply De Novo Review To Pretrial Detention And Release Decisions.

Five circuits—the Sixth, Eighth, Ninth, Tenth, and Eleventh—review de novo whether pretrial detention is warranted under the Bail Reform Act. Each one has held that position for decades.

1. In the decision below, the Sixth Circuit applied its precedent and reviewed de novo the district court's detention decision. As the panel majority explained, the Sixth Circuit treats the "ultimate question whether [pretrial] detention is warranted" as a "mixed question[] of law and fact" warranting de novo review. App. 9a (quoting *United States* v. *Hazime*, 762 F.2d 34, 37 (6th Cir. 1985), and *United States* v. *Stone*, 608 F.3d 939, 945 (6th Cir. 2010)).

In *Stone*, for example, a district court conducted a two-day hearing at which defendants charged with seditious conspiracy provided evidence of stable employment, family ties, and a lack of criminal history. 608 F.3d at 944. The district court held that, with "specified conditions," the defendants could be released pretrial without endangering the community. *Id.* The Sixth Circuit reviewed that decision "de novo," reexamined the record, and reversed, concluding that "no conditions of release will reasonably assure the safety of the community." *Id.* at 945, 948-954.

And as the panel below emphasized in response to the dissenting judge's objections, the Sixth Circuit has long applied this standard. App. 9a. The Sixth Circuit adopted that rule shortly after the Bail Reform Act was enacted. *See Hazime*, 762 F.2d at 37. And the court has no interest in revisiting that precedent. App. 10a (Judge Hermandorfer below stating "whatever the first-instance case for applying deferential review, we lack power here to revisit our precedents.").

2. The Eighth Circuit also reviews de novo "the ultimate conclusion that detention is required." *United States* v. *Cook*, 87 F.4th 920, 921 (8th Cir. 2023) (citation omitted). The Eighth Circuit adopted this standard one year after the Bail Reform Act's enactment. *United States* v. *Maull*, 773 F.2d 1479, 1487 (8th Cir. 1985) (en banc) (citing *Hazime*, 762 F.2d at 37). And the Eighth Circuit continues to apply that standard. *See, e.g.*, *United States* v. *Abad*, 350 F.3d 793, 800 (8th Cir. 2003) (applying de novo review and reversing the district court's decision to release a defendant pretrial, concluding that the defendant was "a danger to the community" and "a flight risk"); *Cook*, 87 F.4th at 925 (independently reviewing the record and affirming pretrial detention of a defendant charged with arson).

For example, in *United States* v. *Cirksena*, 749 F. App'x 488 (8th Cir. 2019) (per curiam), the defendant was charged with firearms and drug trafficking offenses, facing a mandatory minimum of fifteen years' imprisonment. After a detention hearing, the district court ordered the defendant detained pretrial based on "the seriousness of the charged offenses," the defendant's "criminal history," and "his admission to engaging in unlawful activity during part of his term on probation." *Id.* at 488. Conducting "de novo review of the ultimate conclusion on whether detention is required," the Eighth Circuit reversed. *Id.* at 489-490. In doing so, the Eighth Circuit conceded that it found "no clear error in the district court's factual findings," but faulted the district court for not giving greater weight to evidence the Eighth Circuit believed "militat[ed] against pretrial detention." *Id.* at 488-489.

3. The Ninth Circuit likewise conducts de novo review of "whether the district court's factual determinations justify the pretrial detention order." *United States* v. *Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (citation omitted). The Ninth Circuit has explained that, under this standard, an appellate court must "make an independent examination of the record to determine whether the pretrial detention order is consistent with the defendant's constitutional and statutory rights and arrive at [its] conclusion de novo." *United States* v. *Townsend*, 897 F.2d 989, 994 (9th Cir. 1990); *accord Santos-Flores*, 794 F.3d at 1090.

In *United States* v. *Motamedi*, 767 F.2d 1403 (9th Cir. 1985), the defendant was charged with conspiring to export arms on behalf of the Iranian government. *Id.* at 1404. The district court ordered him detained, finding that he was acting as a de facto purchasing agent for the Iranian government, maintained large foreign bank accounts funded by that government, and had persisted in his illegal activities after being warned by federal agents. *Id.* The Ninth Circuit reversed and ordered the defendant released based on its own, independent view of the record evidence. "With all due respect for the district court's determinations," the court explained, "our independent review leads us to a contrary conclusion." *Id.* at 1408. In the Ninth Circuit's view, the defendant's relationship with Iran did not "tip the balance either for or against detention." *Id.*

The Ninth Circuit has consistently applied the de novo standard of review in the four decades since *Motamedi*. *See, e.g.*, *Santos-Flores*, 794 F.3d at 1092-93 (independently reviewing the record and affirming pretrial detention of defendant charged with felony illegal reentry based on history of absconding and prior failures to appear); *United States* v. *Hir*, 517 F.3d 1081, 1090 (9th Cir. 2008) (independently reviewing the record and affirming pretrial detention of defendant charged with providing material support to a designated global terrorist).

4. The Tenth Circuit likewise "appl[ies] de novo review" to pretrial detention and release orders. *United States* v. *Cisneros*, 328 F.3d 610, 613 (10th Cir. 2003). In *Cisneros*, the defendant was charged in a RICO conspiracy involving the manufacture and distribution of narcotics and the murder of prospective witnesses. *Id.* at 612. Reviewing the detention order "de novo" and reexamining "all of the evidence," the Tenth Circuit independently concluded that the government had established that the defendant posed "an identified and articulable threat to an individual or the community" and affirmed her pretrial detention. *Id.* at 616, 618-619 (citation omitted); *see also United States* v. *Ailon-Ailon*, 875 F.3d 1334, 1337 (10th Cir. 2017) (per curiam) (de novo review applies to "the detention or release decision") (citation omitted).

5. The Eleventh Circuit also subjects pretrial detention and release orders to "plenary review on appeal." *United States* v. *Quartermaine*, 913 F.2d 910, 915 (11th Cir. 1990). In *Quartermaine*, the defendant was indicted for drug trafficking offenses. *Id.* at 912. After

four detention hearings, the district court ordered the defendant released on bail, based on his community ties, family support, and ability to post a hefty corporate surety bond. *Id.* at 914-915. But the Eleventh Circuit reversed, concluding that the defendant's "ties to the community do not outweigh" his overseas financial assets, his family abroad, and his "history of drug addiction," among other things. *Id.* at 916-917. The court independently determined that the defendant posed both a flight risk and a danger to the community, and ordered him detained until trial. *Id.* at 915-918; *see also United States* v. *Clum*, 492 F. App'x 81, 84-85 (11th Cir. 2012) (per curiam) (applying de novo review to affirm pretrial detention of a defendant accused of tax fraud).

B. Four Circuits Review Detention Decisions For Clear Error Or Abuse Of Discretion.

Four circuits—the Second, Fourth, Fifth, and D.C.—review the district court's detention decision for clear error or abuse of discretion. Each of these courts believe that it is appropriate to grant deference to the district court's decision to detain or release the defendant. In their view, the district court's decision is entitled to deference because, having had the defendant personally appear before him, the district court has "unique insights into the defendant as an individual and into his personal, professional, and financial circumstances." *United States* v. *Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004).

1. The Second Circuit "appl[ies] deferential review to a district court's bail determination and will not reverse except for clear error." *United States* v. *Zhang*, 55 F.4th 141, 146 (2d Cir. 2022) (quoting *United States* v. *Mattis*, 963 F.3d 285, 291 (2d Cir. 2020)). In

that court, "[t]he clear error standard applies not only to the factual predicates underlying the district court's decision, but also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by a defendant's release." *Id*. (citation omitted). Under this standard, the court will reverse only where it is "left with the definite and firm conviction that a mistake has been committed." *United States* v. *Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007) (citation omitted).

United States v. *English*, 629 F.3d 311 (2d Cir. 2011), illustrates this standard. There, two defendants were charged with conspiring to traffic cocaine and with firearms offenses. The district court ordered them detained pretrial, even though they presented "extraordinarily strong" evidence supporting their release, including evidence of substantial community ties. *Id.* at 313-314, 318. Applying clear-error review, the Second Circuit affirmed. The court recognized that the evidence *could* support a finding that the defendants were neither a flight risk nor a danger to the community, but it found the district court's contrary assessment equally permissible. *Id.* at 319-322. "Where there are two permissible views of the evidence," the court explained, the district court's "choice between them cannot be clearly erroneous." *Id.* at 319 (citation omitted).

2. The Fourth Circuit also reviews pretrial detention decisions "for clear error." *United States* v. *Vane*, 117 F.4th 244, 249 (4th Cir. 2024). In *United States* v. *Clark*, 865 F.2d 1433 (4th Cir. 1989) (en banc), two defendants were charged with taking people hostage and with unlawful possession of a sawed-off shotgun. *Id.* at 1434-35. The district court ordered them

detained pretrial, finding that no conditions of release could reasonably assure the safety of the community given the violent nature of the charged offenses. *Id.* at 1437-38. The Fourth Circuit, sitting en banc, affirmed, holding that "the district court's finding * * * of insufficient conditions for release was not clearly erroneous." *Id.* at 1438.

3. The Fifth Circuit similarly reviews pretrial detention orders under "a deferential standard of review that * * * equate[s] to the abuse-of-discretion standard." *United States* v. *Flores*, 53 F.4th 313, 315 (5th Cir. 2022) (per curiam) (citation omitted). Under this standard, the "question is 'whether the evidence as a whole supports the conclusions of the proceedings below.'" *United States* v. *Moreno*, 857 F.3d 723, 725-726 (5th Cir. 2017).

Thus, for example, in *Flores*, the Fifth Circuit declined to reweigh the evidence of dangerousness on appeal. 53 F.4th 313. The defendant there had been charged with possession of controlled substances and with possessing a firearm in furtherance of a drug trafficking crime. *Id.* at 315. The magistrate judge and the district court had ordered the defendant's pretrial detention based on "the amount of drugs involved in this case and the fact that Flores faced a lengthy punishment." *Id.* The defendant had "presented evidence of his family connections, work history, lack of prior felonies, past compliance with bond conditions, and insufficient resources to flee." *Id.* And he argued on appeal that the district court should have given that evidence greater weight. But the Fifth Circuit disagreed, explaining that "the district court's finding on dangerousness is supported by the record," meaning that the trial court had not "abused its discretion," and its decision should be affirmed. *Id.* at 316.

4. The D.C. Circuit also reviews pretrial detention decisions for clear error. *United States* v. *Hale-Cusanelli*, 3 F.4th 449, 455 (D.C. Cir. 2021). That standard is "highly deferential," and the court "will find clear error only when, although there is evidence to support" the district court's decision, "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (quoting *United States* v. *Munchel*, 991 F.3d 1273, 1282 (D.C. Cir. 2021)). So where "[r]easonable minds might disagree" on a detention decision, the D.C. Circuit will not "substitute [its] judgment for that of the District Court." *Id.* at 457. This standard reflects "the large discretion normally accorded the trial court in this area." *United States* v. *Vasquez-Benitez*, 919 F.3d 546, 551 (D.C. Cir. 2019) (citation omitted).

In *Hale-Cusanelli*, 3 F.4th 449, the defendant was charged with offenses arising from the breach of the U.S. Capitol on January 6, 2021. The district court ordered him detained pretrial, finding that he posed a danger to the community. *Id.* at 453-454. On appeal, the D.C. Circuit applied its "highly deferential" clear-error standard and affirmed. *Id.* at 455. Although the court acknowledged that "[r]easonable minds might disagree" about the detention decision, it declined to "substitute [its] judgment for that of the District Court." *Id.* at 457. The court emphasized that the district court's assessment was entitled to deference because it was the court "most familiar with the facts of the case." *Id.* at 455.

C. Three Circuits Conduct Independent Review Tempered By Deference To The District Court's Judgment.

Three circuits—the First, Third, and Seventh—take an intermediate approach, conducting independent review of the detention decision but tempering that review with deference to the district court's firsthand assessment of the defendant and the case. These courts, too, accord this deference because a district court is generally "much closer to the case" than a circuit court, having "the opportunity to observe the defendant, his alleged confederates, if any, his family, and those with whom he will probably associate if released." *United States* v. *Portes*, 786 F.2d 758, 763 (7th Cir. 1986).

1. The First Circuit conducts "independent review" of pretrial detention decisions, "tempered by a degree of deference" to the district court's decision. *United States* v. *Tortora*, 922 F.2d 880, 882 (1st Cir. 1990). This is "an intermediate level of scrutiny, more rigorous than the abuse-of-discretion or clear-error standards, but stopping short of plenary or de novo review." *Id.* at 883.

The First Circuit stops short of de novo review because it recognizes that the district court's "firsthand" experience with the case provides "an extra dimension not available to appellate judges." *Bayko*, 774 F.2d at 520; *see O'Brien*, 895 F.2d at 813-814. Thus, if the appellate court "sees the decisional scales as evenly balanced," "the trial judge's determination should stand." *O'Brien*, 895 F.2d at 814.

In *Tortora*, for example, the defendant was charged with RICO violations in connection to organized crime. 922 F.2d at 882. The district court released him on conditions including electronic monitoring, house arrest, and a pen register on his telephone. *Id.* Applying "independent review, tempered by a degree of deference" to the district court, the First Circuit reversed, concluding that "the safety of the community cannot reasonably be assured" because the conditions "hinge[d] on the defendant's good faith compliance," authorized outside visits created "a sizeable loophole," and contact restrictions were "honor-dependent." *Id.* at 882, 886-887, 890; *United States* v. *Sadeghi*, No. 25-1501, 2025 WL 4352421 (1st Cir. Aug. 21, 2025) (applying same standard of review) (citing *Tortora*, 922 F.2d at 882).

2. The Third Circuit similarly conducts an independent review of detention decisions, tempered by "respectful consideration" for the district court's "supporting statement of reasons for his or her actions." *United States* v. *Delker*, 757 F.2d 1390, 1400 (3d Cir. 1985).

In *Delker*, the defendant was charged with allegedly controlling a union local through violence, threats, and intimidation. *Id.* at 1391-92. The district court ordered the defendant detained pretrial, finding he would be a danger to the community if released. *Id.* at 1392. Giving "respectful consideration" to the district court's reasoning, the Third Circuit agreed that there was "clear and convincing evidence that Delker pose[d] a danger to the community." *Id.* at 1400-01; *see also United States* v. *Coleman*, 777 F.2d 888, 891 (3d Cir. 1985) and *United States* v. *Himler*, 797 F.2d 156, 159 (3d Cir. 1986) (explaining that the same standard of review applies).

3. The Seventh Circuit also conducts "independent review" tempered by "deference" to the district court's

"greater familiarity with the defendant and the case." *United States* v. *Wilks*, 15 F.4th 842, 847 (7th Cir. 2021) (citation omitted). A "prudent appreciation for the importance of" that greater familiarity requires the court of appeals to "give great weight to the [district court's] assessment." *Portes*, 786 F.2d at 763.

In *Portes*, a member of an alleged drug trafficking network was charged with conspiracy and narcotics distribution. 786 F.2d at 760-761. The government presented evidence that agents found three handguns, cash, and jewelry at the defendant's residence; that intercepted telephone conversations linked him to narcotics distribution; and that a reliable informant reported the defendant would skip bond and flee to Latin America. *Id.* at 761. The magistrate ordered detention, and the district court affirmed. *Id.* Conducting its independent review but giving "great weight to the assessment of those judicial officers" who were "much closer to the case," the Seventh Circuit affirmed. *Id.* at 763.

II. THE SIXTH CIRCUIT'S DECISION IS WRONG.

The Sixth Circuit's use of a de novo standard contravenes this Court's established framework for deciding whether "a district court's decision should be subject to searching or deferential" review. *McLane Co.* v. *E.E.O.C.*, 581 U.S. 72, 79 (2017). "Traditionally, decisions on 'questions of law' are 'reviewable de novo,' decisions on 'questions of fact' are 'reviewable for clear error,' and decisions on 'matters of discretion' are 'reviewable for "abuse of discretion." ' " *Highmark Inc.* v. *Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014) (quoting *Pierce* v. *Underwood*, 487 U.S. 552, 558 (1988)). Under this framework, appellate courts must "'defer[] to the district court'" (A) when "the text of the [governing] statute 'emphasizes that [a] determination is for the district court"—or (B) when "the district court 'is better positioned' to decide" a fact-bound issue. *Id.* at 564 (quoting *Pierce*, 477 U.S. at 559). Both factors make clear "that an appellate court should apply an abuse-of-discretion standard" for pretrial detention orders. *Id.*

A. Deference Is Warranted Because Congress Vested The District Courts With Discretion To Make Detention Decisions.

The "language and structure" of the Bail Reform Act makes clear that a court of appeals should defer to a district court's pretrial detention and release orders because they are "matters of discretion" for the district court. *Pierce*, 487 U.S. at 558-559.

First, the Bail Reform Act instructs "the judicial officer" to "determine" whether pretrial detention is appropriate on the basis of case-specific factors, and requires them to set tailored and individualized release conditions. 18 U.S.C. § 3142(a), (c), (f). They are to do so by considering "the nature and circumstances of the offense charged"; "the weight of the evidence against the person"; "the history and characteristics of the person," including his or her "character, physical and mental condition"; and the "the danger" the person poses. *Id.* § 3142(g). This Court has repeatedly recognized that statutes directing district courts to "find[]" or "determin[e]" some issue based on the individual nature of the case they oversee signal a discretionary act. *Pierce*, 487 U.S. at 559 (citation and emphasis omitted).

For example, in *Pierce*, the Court held that the statute's direction that "the court find[]" whether the position of the United States was “substantially justified” made abuse of discretion review appropriate. *Id.* (citation and emphasis omitted). More recently, in *Highmark*, this Court emphasized that a district court’s “determin[ation] whether a case is ‘exceptional’” for purposes of another statute requires “case-by-case exercise of their discretion” and should likewise be reviewed “for abuse of discretion.” 572 U.S. at 563 (citation omitted). Because these standards are “creature[s] of statute” and call for inquiries that “tend[] to be case specific and fact intensive” they signal the need for deferential appellate review. *Bufkin* v. *Collins*, 604 U.S. 369, 385 (2025); *see also Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (sanctions under Federal Rule of Civil Procedure 11 reviewed for abuse of discretion).

Second, the Bail Reform Act directs the judicial officer before whom the arrestee first appears to conduct a “hearing” in which he may testify, present and cross-examine witnesses, and otherwise proffer information. 18 U.S.C. § 3142(e), (f). It is well established that “courts of appeals afford broad discretion” to district courts in evidentiary matters, given their “greater experience.” *Sprint/United Mgmt. Co.* v. *Mendelsohn*, 552 U.S. 379, 384 (2008); *accord Gen. Elec. Co.* v. *Joiner*, 522 U.S. 136, 141 (1997). And Congress vested district courts with even more discretion here by providing that detention hearings would not be constrained by the rules of evidence. 18 U.S.C. § 3142(f).

Third, the Bail Reform Act allows judicial officers both to modify release orders “at any time,” *id.* § 3142(c)(3), and to “permit the temporary release of the person” if “the judicial officer determines such release to be necessary" for a "compelling reason," *id.* § 3142(i). That type of ongoing judicial management is also consistent with a grant of discretion to a district court. *See, e.g.*, *Salve Regina Coll.* v. *Russell*, 499 U.S. 225, 233 (1991) ("[I]t is 'especially common' for issues involving supervision of litigation to be reviewed for abuse of discretion.") (quoting *Pierce*, 487 U.S. at 558 n.1).

B. Deference Is Separately Warranted Because District Courts Are Better Positioned To Decide The Factual Issues Relevant To Pretrial Detention.

The Sixth Circuit's inattention to the statutory framework led it to incorrectly characterize the district court's pretrial release determination not as a discretionary decision, but rather as a "mixed question[] of law and fact." App. 9a (citation omitted); *contra Highmark*, 572 U.S. at 563-564 (distinguishing decisions on "questions of law" and "questions of fact" from decisions on "matters of discretion") (citation omitted). But even on that framing, this Court's precedents require deference to the district court.

1. This Court has repeatedly emphasized "[m]ixed questions are not all alike": the standard of review "all depends—on whether" such review "entails primarily legal or factual work." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC* v. *Vill. at Lakeridge, LLC*, 583 U.S. 387, 395-396 (2018). De novo review is generally appropriate "when applying the law involves developing auxiliary legal principles of use in other cases." *Id.* at 396. But when the trial court is "immerse[d]" in "case-specific factual issues," "appellate courts should usually review a decision with deference." *Id.*; *see also Guerrero-Lasprilla* v. *Barr*, 589

U.S. 221, 228 (2020) (this test provides the "proper standard" for reviewing "mixed questions in * * * a district, bankruptcy, or agency decision" (internal quotation marks omitted)).

Pretrial detention determinations fall squarely in the latter category. The ultimate assessment that a district court makes—whether any set of release conditions can likely ensure that defendant will appear for trial and not pose a danger to others—"must be made individually" and the "inquiry is factbound." *Munchel*, 991 F.3d at 1283 (quotation marks and citations omitted); *see also Tortora*, 922 F.2d at 888 ("Detention determinations * * * must be based on the evidence which is before the court regarding the particular defendant."); *see generally* 18 U.S.C. § 3142(f) (requiring that a finding of dangerousness "be supported by clear and convincing evidence").

To analyze these issues, district courts must "marshal and weigh evidence, make credibility judgments, and otherwise address * * * 'multifarious, fleeting, special, narrow facts'" about an individual defendant—all tasks that "utterly resist generalization." *Lakeridge*, 583 U.S. at 396 (quoting *Pierce*, 487 U.S. at 561-562); *see* 18 U.S.C. § 3142(g) (prescribing the "[f]actors to be considered" including "the weight of the evidence against the person"). This "tak[ing] a raft of case-specific historical facts, consider[ing] them as a whole, [and] balanc[ing] them one against another" is "about as factual sounding as any mixed question gets." *Lakeridge*, 583 U.S. at 397 (footnote omitted). "And the fact-bound nature of the decision limits the value of appellate court precedent." *Buford* v. *United States*, 532 U.S. 59, 65-66 (2001).

2. The Sixth Circuit's analysis confirms this. In parsing the record evidence, the panel did not pronounce any new legal rule or standard. Rather, the majority merely conducted its own assessment of the substance, context, and probative value of Wagner's various social media postings. App. 3a-6a, 16a-19a. Based on those assessments, the panel drew conclusions about, among other things, the "weight of the evidence" of Wagner's dangerousness and the credibility of "his asserted promises to abide by the" release conditions imposed by the district court. App. 14a, 21a. As Judge Bloomekatz's dissent makes clear, this analysis rested entirely on the majority's subjective interpretation of contestable facts that have little to no bearing on other matters. App. 47a-52a.

This Court has repeatedly held that de novo review is inappropriate in such circumstances. *Bufkin*, 604 U.S. at 383 ("[W]hen the initial decisionmaker is 'marshal[ing] and weigh[ing] evidence' and 'mak[ing] credibility judgments' * * * its work is fact intensive, and its determinations should be reviewed with deference.") (quoting *Lakeridge*, 583 U.S. at 396); *Wilkinson* v. *Garland*, 601 U.S. 209, 222, 225 (2024) (holding that mixed question involving the adjudicator's "weigh[ing] [of] found facts" was "primarily factual" and that review of the adjudicator's decision therefore was "deferential"); *Koon* v. *United States*, 518 U.S. 81, 98-99 (1996) (similar); *Anderson* v. *Bessemer City*, 470 U.S. 564, 573 (1985) (a district court's "finding of intentional discrimination is a finding of fact," warranting clear-error review). The Sixth Circuit's failure to follow these precedents was error.

3. Practical considerations reinforce that deference is warranted because, "as a matter of the sound

administration of justice," district courts are "better positioned * * * to decide" pretrial detention issues. *Pierce*, 487 U.S. at 559-560.

As Judge Bloomekatz observed in her dissent below, the analysis district courts conduct to craft pretrial release orders is broadly "analogous" to other work that district courts are regularly called upon to do in criminal matters, such as sentencing. App. 40a-41a.[2] And this Court has applied a deferential standard for reviewing district courts' application or departures from the Sentencing Guidelines, due to "the relative institutional advantages enjoyed by the district court in making" those determinations. *Buford*, 532 U.S. at 64; *accord Koon*, 518 U.S. at 99 (similar).

As this Court has noted, a "district judge sees many more" such matters "than does an appellate judge," and this "[e]xperience" helps the district court make its decisions. *Buford*, 532 U.S. at 64. The district court here expressly relied on that experience in Wagner's case—explaining that it was drawing on its history with similar proceedings to decide that it would be adequate to subject Wagner to home detention, GPS monitoring, device restrictions, and other conditions. App. 143a-144a. That was a good indication that deference was due.

[2] Notably, the Sixth Circuit itself has long recognized that abuse of discretion is the appropriate standard for reviewing district courts' detention orders pending sentencing or appeal, which are issued pursuant to an analogous statutory provision. *United States* v. *Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002); *see* 18 U.S.C. § 3143(a), (b) (directing courts to order detention "unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person").

Likewise, this Court has also examined whether the application of a de novo standard would undermine a statute's objectives by expanding or prolonging appellate litigation. *See Cooter & Gell,* 496 U.S. at 404. Thus, when considering awards of attorney's fees under the Equal Access to Justice Act, this Court drew support for an abuse-of-discretion standard from its determination that a request for fees under the statute "should not result in a second major litigation." *Pierce,* 487 U.S. at 563 (quoting *Hensley* v. *Eckerhart,* 461 U.S. 424, 437 (1983)). And the Court similarly concluded in *Cooter & Gell* that "discourag[ing] litigants from pursuing marginal appeals" served the "policy goals" of Federal Rule of Civil Procedure 11, which the Court found supported "reducing the amount of satellite litigation" concerning sanctions. 496 U.S. at 404.

Here too, the delays and that would result from searching appellate review of pretrial detention decisions weigh heavily against de novo review, because of the importance of resolving detention issues swiftly given the liberty interests at stake. Indeed, speed is a critical objective of the Bail Reform Act, which explicitly directs courts to resolve appeals "promptly." 18 U.S.C. § 3145(b); *see generally Pierce*, 487 U.S. at 560 (noting that "even where the district judge's full knowledge of the factual setting can be acquired by the appellate court, that acquisition will often come at unusual expense").

Under these circumstances, "basic principles of institutional capacity counsel in favor of deferential review." *McLane*, 581 U.S. at 81. Such review does not prevent effective oversight of legal issues. "'[A]pplying a unitary abuse-of-discretion standard' does not shelter a district court that makes an error of law, because '[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.'" *Id.* at 81 n.3 (quoting *Cooter & Gell*, 496 U.S. at 403, 405). But it ensures that the "case specific and fact intensive" determinations are given due weight. *Bufkin*, 604 U.S. at 385.

III. THE COURT SHOULD GRANT CERTIORARI NOW.

A. The Standard Of Review For Pretrial Detention And Release Decisions Is Important.

This Court has repeatedly recognized that the "standard for federal appellate review" bears on the "'essential characteristic[s] of" how "[the federal court] system" administers justice. *Gasperini* v. *Ctr. for Humanities, Inc.*, 518 U.S. 415, 431 (1996) (citation omitted).

Accordingly, this Court has addressed the issue across a range of different contexts in recent years. *See, e.g.*, *Bufkin*, 604 U.S. at 381 (resolving the "appropriate standard of review for challenges to the VA's application of the benefit-of-the-doubt rule"); *Google LLC* v. *Oracle Am., Inc.*, 593 U.S. 1, 24 (2021) (resolving the standard of review for a finding of "fair use" under copyright laws); *Lakeridge*, 583 U.S. at 389 (granting certiorari to resolve the standard for reviewing a Bankruptcy Court's determination that a creditor does not qualify as a non-statutory insider); *McLane*, 581 U.S. at 79 (granting "certiorari to resolve the disagreement between the Courts of Appeals over the appropriate standard of review for the decision whether to enforce an EEOC subpoena").

These cases underscore that choosing the appropriate standard of review is crucial in any context, because it often determines the outcome. *See Dickinson*, 527 U.S. at 162 ("The upshot" is a "practical difference in outcome depending upon which standard is used."); *see also Salve Regina Coll.*, 499 U.S. at 238 (noting that "the difference between a rule of deference and the duty to exercise independent review is 'much more than a mere matter of degree'") (citation omitted).

It is especially important in criminal proceedings, where "the individual's strong interest in liberty" is at stake. *Salerno*, 481 U.S. at 750. Both criminal defendants and the federal government have a compelling interest in correct and uniform legal standards in this area. *See generally Turner* v. *Rogers*, 564 U.S. 431, 445 (2011) ("[I]t is obviously important to ensure accurate decisionmaking" given the "importance" of the "interest against loss of personal liberty through imprisonment").

B. The Question Presented Frequently Recurs, Yet Evades This Court's Review.

Despite the importance of the issue and the background constitutional interests involved, this Court is presented with few opportunities to correct the split highlighted by the Sixth Circuit's decision. Although district courts conduct tens of thousands of pretrial detention hearings annually[3]—and courts of appeal

[3] For example, the Administrative Office of U.S. Courts has reported that a "total of 73,815 bail determinations were made by the courts" in 2025. U.S. Courts, *Pretrial Services — Judicial Business 2025*, https://perma.cc/5PH4-MUB7 (last visited Sept. 17, 2026). Excluding immigration cases, 27,537 defendants were detained and never released during that period. U.S. Courts,

review such orders with some regularity—the circuit split has remained entrenched because district courts endeavor to bring criminal cases to trial expeditiously, given "the stringent time limitations of the Speedy Trial Act." *Salerno*, 481 U.S. at 747 (footnote omitted); *see* 18 U.S.C. § 3161 *et seq.*

As a result, a pretrial detention order often proves too short "'in its duration * * * to be fully litigated' through the * * * courts (and arrive here) prior to its 'expiration.'" *Turner*, 564 U.S. at 440 (citations omitted) (imprisonment for up to 12 months is too short for review); *accord First Nat'l Bank of Boston* v. *Bellotti*, 435 U.S. 765, 774 (1978) (18-month period too short).

The consistent evasion of this issue from review underscores the importance of resolving it when presented. The proper allocation of functions between the trial and the appellate court in pretrial detention proceedings warrant this Court's immediate review.

C. Further Percolation Would Serve No Purpose.

Further percolation would not aid this Court's resolution of the question presented. Every court of appeals with criminal jurisdiction has weighed in—and each has staked out a definitive position on the appropriate standard of review. Multiple courts have provided considered justifications for their respective approaches and have engaged with the reasoning of the other camps. *See, e.g.*, *Hurtado*, 779 F.2d at 1471-72; *O'Brien*, 895 F.2d at 812-814; *Portes*, 786 F.2d at 762; *Maull*, 773 F.2d at 1487; *Wilks*, 15 F.4th at 847; App.

Judicial Business 2025 Table H-14A, https://perma.cc/3U3S-CTJH (detailing pretrial services release and detention statistics for 2025).

39a-43a (Bloomekatz, J., dissenting). There is simply nothing left to percolate.

Nor is there any prospect that the split will resolve on its own. The division first crystallized more than forty years ago, within a year of the Bail Reform Act's passage. In the decades since, not a single circuit has changed sides. To the contrary, the circuits have only grown more entrenched, repeatedly reaffirming their respective positions. *See, e.g.*, *Wilks*, 15 F.4th at 847; App. 9a-10a. The split is mature, intractable, and will persist unless this Court intervenes.

D. This Petition Provides An Excellent Vehicle To Resolve The Question Presented.

This case presents an ideal vehicle for resolving this longstanding split on the standard of review for pretrial detention orders.

First, the standard of review was outcome-determinative here—and exemplifies why deferential review is appropriate. The district court conducted a two-day hearing and drew on its extensive experience to craft tailored release conditions for Wagner that took account of his unique circumstances and the particulars of his case. Yet the Sixth Circuit, applying de novo review, re-weighed the evidence itself, giving no deference to the district court's assessment of the relevant factors or its experience with similar matters. In doing so, it highlighted the error of this approach.

Second, while detention decisions are generally rendered moot at the conclusion of trial, Wagner has taken care to present the issue expeditiously for this Court's review. Wagner has filed this petition within weeks of the Sixth Circuit's decision and well in advance of his trial date. By doing so, Wagner has ensured that the Court has an opportunity to address a legal issue that has intractably divided the lower courts.

IV. THIS COURT SHOULD EXPEDITE CONSIDERATION OF THIS PETITION.

Pursuant to Supreme Court Rule 21, Petitioner moves for expedited consideration of this petition. Such expedition is necessary to ensure that the Court has an adequate opportunity to consider and resolve the petition before Wagner's trial's concludes.

That trial is currently scheduled to begin on November 3, 2026. *United States* v. *Wagner*, No. 2:26-cr-20059-DPH-APP (E.D. Mich. Aug. 14, 2026), Dkt. No. 41. The parties have jointly sought a 60 day extension of that trial date, but the district court has not yet acted on that request. Wagner has waived his Speedy Trial Act rights, App. 156a, and does not oppose further delay if necessary to ensure that this Court can adequately review the Sixth Circuit's order prior to its expiration. But because any such delay compromises Wagner's liberty interests while he remains in detention, it should extend no longer than necessary.

To ensure timely consideration of the petition, Wagner requests that the government be directed to respond to the petition on or before October 19, 2026. That date affords respondents the full 30 days that they are ordinarily granted to respond to a petition under this Court's Rule 15.3, but would not permit extensions. Wagner would also waive the 14-day waiting period for reply briefs under this Court's Rule 15.5, so that the petition and response could be distributed immediately. The Court would then be able to consider the petition and response at the earlier time convenient to the Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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